

FILED
NOV 30 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
JUDGE

1 IN THE NORTHERN DISTRICT OF CALIFORNIA
2 OAKLAND, CALIFORNIA; DEPT 2; CLAUDIA WILKEN, JUDGE
3 ARMSTRONG,) C-94-2307
4 PLAINTIFF,) THURSDAY, 11/15/07
5 V.) DEFENDANT/PLAINTIFF MOTIONS
6 SCHWARZENEGGER,) FURTHER CASE MANAGEMENT
7 DEFENDANT.)
8 _____)

Handwritten:
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9 REPORTER'S TRANSCRIPT OF PROCEEDINGS

10 APPEARANCES:

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18 FOR THE DEFENDANT:

19 CA STATE ATTORNEY GENERAL'S OFFICE
20 BY: JAY RUSSELL,
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25 REPORTED BY: STARR A. WILSON, CSR 2462

1 OAKLAND, CALIFORNIA; THURSDAY, NOVEMBER 15, 2007; 3:00 P.M.,
2 DEPARTMENT TWO; CLAUDIA WILKEN, JUDGE

3 -000-

4 **THE CLERK:** CALLING CIVIL CASE C-94-2307,
5 ARMSTRONG VERSUS SCHWARZENEGGER.

6 **MS. NORMAN:** GOOD AFTERNOON, YOUR HONOR. SARA
7 NORMAN FROM THE PRISON LAW OFFICE FOR PLAINTIFFS.

8 UM, I HAVE WITH ME ALSO A NUMBER OF ATTORNEYS FROM
9 ROSEN, BIEN AND GALVAN ALSO FOR PLAINTIFFS. HOLLY BALDWIN.
10 GAY GRUNFELD AND ANNE MANIA AND MICHAEL BIEN.

11 **MR. RUSSELL:** GOOD AFTERNOON, YOUR HONOR. JAY
12 RUSSELL FROM THE ATTORNEY GENERAL'S OFFICE REPRESENTING
13 DEFENDANTS.

14 I ALSO HAVE WITH ME JENNIFER NYGAARD AND JOSE
15 CELADON ZEPEDA AS WELL AS THE DIRECTOR OF THE OFFICE OF
16 COURT COMPLIANCE, TRAY LUCY, AS REQUESTED BY THE COURT AT
17 THE LAST HEARING.

18 **THE COURT:** OKAY. THANK YOU.

19 **MR. ADAM:** AND, YOUR HONOR, ONE MORE. GREG ADAM,
20 CARROLL BURDICK & MCDONOUGH, ON BEHALF OF THE AMICUS CCPOA.

21 **THE COURT:** OKAY.

22 UM, SO JUST TO ADD THE SUSPENSE ON THIS, I'M GOING
23 TO GO AHEAD AND DENY WITHOUT PREJUDICE THE MOTION TO REFER
24 THE CASE TO A THREE-JUDGE PANEL. I'VE BEEN KEEPING IT UNDER
25 SUBMISSION. BUT RATHER THAN HAVE IT ON THE DOCKET, I'M JUST

1 GOING TO DENY IT WITHOUT PREJUDICE PENDING THE RULING ON THE
2 CASES THAT HAVE ALREADY HAVE GONE TO THE THREE-JUDGE PANEL.

3 WITH RESPECT TO THE MOTION TO RECONSIDER THE
4 SEPTEMBER 11 ORDER, I'M DISINCLINED TO RECONSIDER IT, BOTH
5 BECAUSE I DON'T THINK THERE'S A MISTAKE OR SURPRISE TYPES OF
6 GROUNDS TO DO SO, AND ALSO BECAUSE I STILL THINK THE WRITTEN
7 ORDER IS WELL TAKEN. AND TO THE EXTENT THAT IT PERHAPS
8 DOESN'T COMPORT WITH WHAT I TENTATIVELY THOUGHT AT THE TIME
9 OF THE HEARING, IT DOES COMPORT WITH WHAT I BELIEVE TO BE
10 NECESSARY IN THE NARROWEST POSSIBLE RELIEF, ETC.

11 UM, YOU CAN ARGUE THAT BRIEFLY IF YOU LIKE BUT
12 THAT'S MY INCLINATION.

13 AND THEN WE HAVE A NUMBER OF ISSUES ON THE STATUS
14 CONFERENCE AGENDA WHICH WE CAN TAKE UP ONE BY ONE. SO IF
15 YOU WANT TO --

16 **MS. NORMAN:** JUST ONE MORE THING, YOUR HONOR. THE
17 MOTION REGARDING OUT-OF-STATE MONITORING IS BEFORE YOU.

18 **THE COURT:** UM, I'M GOING TO DENY THAT AGAIN
19 WITHOUT PREJUDICE. AT THE MOMENT, THERE IS NOT THAT MANY
20 PEOPLE. WE DON'T NEED TO TAKE OUT-OF-STATE TRIPS TO CHECK
21 UP ON SIX PEOPLE.

22 IF IT BECOMES AN ISSUE LATER, WE'LL DEAL WITH IT.
23 BUT I DON'T THINK THE MOST EFFICIENT WAY TO MONITOR THEM
24 RIGHT NOW WOULD BE GOING OUT OF STATE TO MONITOR THEM. SO I
25 PLAN TO DENY THAT WITHOUT PREJUDICE.

1 SO DID YOU WANT TO ADDRESS THE MOTION TO
2 RECONSIDER AT ALL?

3 MR. RUSSELL: YES, YOUR HONOR.

4 UM, PRIMARILY WHAT I BELIEVE NEEDS TO BE ADDRESSED
5 IS -- IS THE DIFFERENCE BETWEEN WHAT WAS BEING DISCUSSED AT
6 THE AUGUST 16 HEARING AND WHAT DID ACTUALLY COME OUT IN THE
7 SEPTEMBER 11 ORDER. AND, IN PARTICULAR, ONE OF THE THINGS
8 THAT WE END UP REVIEWING ARE THE DECLARATIONS REGARDING
9 FUNDING AS WELL AS BUDGET CHANGE PROPOSALS.

10 UM, THE DECLARATIONS WERE PROVIDED TO PLAINTIFF'S
11 COUNSEL PRIOR TO THE ISSUANCE OF THIS COURT'S ORDER, BASED
12 UPON THE RULINGS THAT WERE MADE BY THE COURT DURING THE
13 AUGUST 16 HEARING.

14 THOSE DECLARATIONS DID STATE THAT AS OF THAT DATE,
15 WHICH WAS SEPTEMBER 5, 2007, THERE WAS ADEQUATE FUNDING FOR
16 THE -- FOR THE PLAN THAT WAS REQUIRED BY THE COURT'S
17 PREVIOUS ORDERS. AND THAT THERE WERE NO BUDGET CHANGE
18 PROPOSALS IN EFFECT AT THAT TIME GIVEN THE COURT'S ORDERS
19 THAT WERE PENDING AS OF SEPTEMBER 5, 2007.

20 THAT HAS NOW CHANGED DRAMATICALLY. THOSE
21 DECLARATIONS ARE NO LONGER TRUE. THERE ARE NOW BUDGET
22 CHANGE PROPOSALS BEING SUBMITTED TO THE DEPARTMENT OF
23 FINANCE. THERE IS A LOT OF WORK THAT'S BEING DONE. THERE
24 ARE A LOT OF CHANGES THAT ARE BEING MADE. BUT THE
25 DECLARATIONS THAT WERE PROVIDED PRIOR TO THE COURT'S ORDER

1 DON'T COMPORT WITH WHAT THE COURT SAID ON SEPTEMBER 11.

2 THAT'S THE KIND OF THING THAT I BELIEVE NEEDS TO
3 BE RECONSIDERED BY THIS COURT.

4 **THE COURT:** WELL, ONLY BECAUSE THE ORDER SAID
5 DECLARATIONS WITH SUPPORTING DOCUMENTS AND YOU HAD SUBMITTED
6 ONLY DECLARATIONS AND NO SUPPORTING DOCUMENTS. THAT'S THE
7 ONLY DIFFERENCE THAT COMES TO ME.

8 **MR. RUSSELL:** WELL, THERE IS NOW -- WELL, THERE IS
9 NOW BEING SUBMITTED A BUDGET CHANGE PROPOSAL TO THE
10 DEPARTMENT OF FINANCE FOR THE ACCESS THAT WAS DEFINED BY THE
11 COURT WITHIN THE SEPTEMBER 11 ORDER, WHICH VASTLY INCREASES
12 THE -- THE BURDEN THAT CDCR IS UNDER IN ORDER TO BE ABLE TO
13 COMPLY WITH THE COURT'S ORDERS.

14 **THE COURT:** COMPLY WITH THE ORDER THAT SAYS
15 WHETHER YOU SHOULD DECLARE WHETHER YOU HAVE FUNDING OR NOT?

16 **MR. RUSSELL:** NO. TO COMPLY WITH THE COURT'S
17 ORDER THAT EVERYBODY IN BPH AND THE CCDR NEEDS A COMPUTER TO
18 BE ABLE TO ACCESS THE DECK SYSTEM.

19 **THE COURT:** OKAY. WELL, I'M NOT SURE ANYONE IS
20 COMPLAINING ABOUT THE DATE ON WHICH YOUR DECLARATION WAS
21 FILED. I THINK THEY'RE JUST COMPLAINING THAT YOU DIDN'T
22 FILE SUPPORTING DOCUMENT ALONG WITH YOUR DECLARATIONS. AM I
23 RIGHT?

24 **MS. BALDWIN:** YOU'RE CORRECT, YOUR HONOR.

25 **THE COURT REPORTER:** WHO ARE YOU?

1 **MS. BALDWIN:** I'M HOLLY BALDWIN FROM ROSEN, BIEN
2 AND GALVIN FOR THE PLAINTIFFS.

3 UM, THE DECLARATIONS THAT THEY HAVE SUBMITTED
4 SIMPLY SAY, WITHOUT PROVIDING ANY FURTHER LEVEL OF DETAIL,
5 WE HAVE FUNDING TO DO WHAT WE NEED TO DO TO IMPLEMENT DECKS
6 AND THE ACCOMMODATIONS PLAN.

7 THE SEPTEMBER 11 ORDER PROVIDES THAT THEY SHOULD
8 BE GIVING MORE SPECIFICS, MORE DETAILS ABOUT THE FUNDING
9 THAT THEY HAVE. AND THEN ALSO PROVIDES THAT THEY SHOULD BE
10 SUBMITTING ANY DCPS OR EVIDENCE OF THE FUNDING THAT THEY
11 NEED.

12 UM, THEY -- THEY JUST NEED TO SUPPLY MORE DETAIL.
13 AND --

14 **THE COURT:** AS OF SEPTEMBER 5? YOU WANT DETAILS
15 ABOUT WHAT THEY HAD ON SEPTEMBER 5?

16 **MS. BALDWIN:** NO. WE WANT DETAILS ABOUT WHAT THEY
17 HAVE NOW. WHAT IS -- DO THEY HAVE FUNDING TO DO WHAT THE
18 COURT HAS ORDERED THEM TO DO OR NOT?

19 **THE COURT:** OKAY, WELL, UM, I DON'T KNOW
20 WHETHER -- DID I SAY A DATE? THAT THE DECLARATIONS WERE TO
21 AS OF A CERTAIN DATE?

22 **MS. BALDWIN:** YES, YOUR HONOR.

23 **THE COURT:** I SUPPOSE THAT IS ALWAYS A FLUID
24 QUESTION.

25 **MR. RUSSELL:** WELL, THE ORDER DOES STATE THAT

1 WITHIN THIRTY DAYS, BUDGET CHANGE PROPOSALS ARE TO BE
2 PROVIDED TO THE PLAINTIFF'S COUNSEL. THAT'S 30 DAYS OF AS
3 OF THE SEPTEMBER 11 ORDER. BUT THE SEPTEMBER 11 ORDER
4 CHANGED THE ENTIRE LANDSCAPE OF WHAT CDCR AND BPH ARE
5 OBLIGATED TO DO.

6 AS OF SEPTEMBER 5 THERE WERE NO BUDGET CHANGE
7 PROPOSALS AND THERE WAS ADEQUATE FUNDING.

8 AS OF SEPTEMBER 11 THERE WAS NOT ADEQUATE FUNDING.

9 AND NOW AS OF NOVEMBER 15, THERE IS A BUDGET
10 CHANGE PROPOSAL IN EFFECT PENDING BEFORE THE DEPARTMENT OF
11 FINANCE, WHICH PROVIDES FOR THE DISBURSEMENT OF TENS OF
12 MILLIONS OF DOLLARS TO COMPLY WITH THE COURT'S ORDER ISSUED
13 SEPTEMBER 11. SO EVERYTHING CHANGED.

14 **THE COURT:** OKAY. WELL, THAT'S FINE. SO NO ONE
15 IS GOING TO COMPLAIN THAT YOU -- ANY MORE THAT YOU DIDN'T
16 DOCUMENT THE FACTS ON SEPTEMBER FIFTH. BUT I THINK
17 PLAINTIFFS WANT TO KEEP UP AS CHANGES HAPPEN SO I'M GUESSING
18 AT THIS POINT THEY'D PROBABLY LIKE TO HAVE UPDATED
19 DECLARATIONS SAYING WHAT YOUR FUNDING SITUATION IS NOW OR
20 MAYBE 30 DAYS FROM NOW OR WHENEVER WOULD BE A GOOD TIME.

21 **MR. RUSSELL:** WELL, I THINK WE CAN DO THAT, YOUR
22 HONOR. I -- YES, I -- WE CAN DEFINITELY DO THAT.

23 **THE COURT:** OKAY.

24 **MR. RUSSELL:** BUT AS LONG AS THE COURT RECOGNIZES
25 THAT THINGS ON NOVEMBER 15TH ARE DIFFERENT THAN THINGS WERE

1 ON SEPTEMBER THE FIFTH.

2 THE COURT: I THINK THAT'S A GOOD THING.

3 MR. RUSSELL: OKAY.

4 MS. BALDWIN: WE HOPE THAT THAT IS TRUE, YOUR
5 HONOR.

6 THE COURT: CHANGE FOR A BETTER, WE HOPE. NOT FOR
7 THE WORSE.

8 MR. RUSSELL: I BELIEVE SO, YOUR HONOR.

9 THE COURT: OKAY. SO IS 30 DAYS FROM NOW GOOD
10 ENOUGH?

11 MS. BALDWIN: I BELIEVE SO. SOONER WOULD BE
12 BETTER BUT I THINK THAT THIRTY DAYS WOULD BE SUFFICIENT.

13 THE COURT: OKAY. SO WHETHER OR NOT WE CHANGE
14 WHATEVER I DID DIFFERENTLY ON SEPTEMBER 11 THAN I DID ON
15 AUGUST 16, WE'LL SET ALL THAT ASIDE AND INSTEAD WE WILL HAVE
16 THE DECLARATIONS AND THE DOCUMENTATION ON THE CURRENT
17 SITUATION GIVEN TO US 30 DAYS FROM TODAY, WHICH IS TO SAY,
18 DECEMBER 15.

19 NOW, WILL THAT BE THE SITUATION AS OF DECEMBER 15
20 OR WILL IT BE THE SITUATION AS OF NOVEMBER 15?

21 MR. RUSSELL: IT WILL BE THE SITUATION AS OF THE
22 DATE OF THOSE DECLARATIONS WERE SIGNED, YOUR HONOR. AND I
23 PRESUME IT'S GOING TO BE MORE TOWARD DECEMBER 15 AS OPPOSED
24 TO TODAY.

25 THE COURT: OKAY. ALL RIGHT. SO WHAT ELSE?

1 WE'RE STILL ON THE RECONSIDERATION.

2 DID YOU HAVE ANYTHING ELSE THAT WAS ACTUALLY
3 IMPORTANT FOR YOU?

4 **MR. RUSSELL:** WELL, YOUR HONOR, THE OTHER, THERE'S
5 TWO OTHER ISSUES, I BELIEVE, REALLY TIE INTO THAT. I MEAN
6 PRIMARILY IT CONCERNS THE ACCESS THAT'S TO BE PROVIDED TO
7 THE DECK SYSTEM.

8 UM, THE ACCESS THAT WAS -- THAT WAS CONTEMPLATED,
9 I BELIEVE, BY THE EARLIER ORDERS OF THIS COURT, PARTICULARLY
10 THE MAY 30, 2006 INJUNCTION, WAS THAT THERE WAS TO BE A
11 COMPUTERIZED REAL TIME STATE WIDE SYSTEM FOR CHECKING
12 DISABILITY INFORMATION. AND THAT THAT COULD BE CHECKED
13 BY -- BY PERSONS WHO COME IN CONTACT WITH PAROLEES OR
14 INMATES. AND -- AND WHAT THE COURT'S ORDER NOW PROVIDES FOR
15 WITH ACCESS IS THAT EVERY PERSON WHO MIGHT DO THAT IS
16 REQUIRED TO HAVE A WORK STATION. AND IT MIGHT BE A PERSON
17 WHO WOULD HAVE NEED FOR SUCH A WORK STATION ONCE A WEEK.
18 MAYBE EVEN ONCE A MONTH.

19 AND WHAT WE'RE TRYING TO DO NOW IS WE'RE TRYING TO
20 PROVIDE THAT KIND OF ACCESS TO 34 PENAL INSTITUTIONS AND
21 OVER 170 FIELD PAROLE OFFICES. IT'S A MASSIVE UNDERTAKING
22 THAT CAN'T BE DONE. I MEAN IT'S LIKE -- IT WOULD BE LIKE
23 ASKING SOMEONE TO CLEAN UP THE SPILL THAT RECENTLY OCCURRED
24 IN THE SAN FRANCISCO BAY BY DECEMBER 31. THAT CAN'T BE DONE
25 BY DECEMBER 31, YOUR HONOR.

1 **THE COURT:** SO IS IT JUST A TIMING PROBLEM OR IS
2 IT A -- SOME OTHER KIND OF PROBLEM?

3 **MR. RUSSELL:** WELL, IT'S PRIMARILY -- WELL, IT'S
4 PRIMARILY A TIMING PROBLEM. I ALSO BELIEVE THAT IT IS A
5 DEFINITION PROBLEM, YOUR HONOR. THIS IS THE ISSUE THAT WE
6 RAISED ON AUGUST 16.

7 I THINK THAT THERE ARE SEVERAL INSTANCES IN WHICH,
8 FOR EXAMPLE, IF, YOU KNOW, CORRECTIONAL COUNSELORS HAVE A
9 WORK ROOM THAT THEY GO TO IN ORDER TO REVIEW INFORMATION
10 PRIOR TO MEETING WITH PAROLEES THAT IT WOULD BE SUFFICIENT
11 IF THERE WERE COMPUTERS AVAILABLE ON WHICH THEY COULD ACCESS
12 DECKS. IF THEY HAD A PASSWORD. IF THEY HAD A LICENSE TO BE
13 ABLE TO LOOK AT THE SYSTEM.

14 I DON'T THINK THAT IT WOULD BE NECESSARY FOR EACH
15 AND EVERY CORRECTIONAL COUNSEL ONE TO HAVE THEIR OWN WORK
16 STATION WHEREBY THEY COULD CHECK THAT INFORMATION.

17 IN INSTANCES IN WHICH CONNECTIVITY IS DIFFICULT, I
18 THINK THERE'S ALSO OTHER POTENTIAL WORK AROUNDS. FOR
19 EXAMPLE, I MENTIONED ON AUGUST 16 THAT IT STARTED OUT ALMOST
20 AS A FACETIOUS STATEMENT BUT WE STARTED TO THINK MAYBE IT'S
21 A GOOD IDEA, WE COULD HAVE SOMETHING THAT WOULD BE THE
22 EQUIVALENT OF THE DECKS HOT LINE WHEREBY IF THERE WERE A
23 CORRECTIONAL COUNSELOR ONE WHO DID NOT HAVE IMMEDIATE ACCESS
24 TO THE DECK SYSTEM THEY COULD PHONE TO A HOT LINE AND HAVE
25 SOMEBODY WHO COULD CHECK IT FOR THEM.

1 THE WHOLE POINT HERE, YOUR HONOR, IS OUR -- FOR
2 THE PERSONNEL TO BE ABLE TO HAVE ACCESS TO INFORMATION
3 BEFORE THEY COME IN CONTACT WITH A PAROLEE SUCH THAT ANY
4 DISABILITIES CAN BE ACCOMMODATED PRIOR TO THAT CONTACT. AND
5 I DON'T -- I THINK WHAT WE'RE -- WHAT WE'RE LOSING FOCUS OF
6 IS THE -- IS -- IS OUR ACCOMMODATIONS REQUIRED UNDER THE ADA
7 AND THE REHABILITATION ACT AND THIS IS MORPHING INTO
8 PROVIDING EVERYBODY WITH A WORK STATION WITHIN THE CDCR AND
9 THE BPH.

10 MS. NORMAN: YOUR HONOR, I HAVE A --

11 THE COURT: OKAY.

12 MS. NORMAN: A COUPLE OF POINTS TO MAKE ON THIS
13 TOPIC UNLESS YOU GOT FURTHER QUESTIONS.

14 THE COURT: LET ME SAY ONE THING. WHAT I DID SAY
15 ON AUGUST 16 WAS THAT WHAT PLAINTIFF WERE ASKING --
16 PLAINTIFFS WERE ASKING FOR WAS THE MODEL OF WHAT WOULD BE
17 BEST THAT IF THAT CAN'T BE DONE AND THERE'S A GOOD REASON
18 WHY IT CAN'T, AND THERE'S A GOOD WORK AROUND, THEN THAT WILL
19 BE ACCEPTABLE. SO I THINK WHAT YOU NEED TO DO IF THAT'S THE
20 CASE, IS NOT MOVE TO RECONSIDER THE ORDER, BUT TO COME
21 FORWARD SAYING HERE'S WHAT WE'VE DONE. HERE'S WHY WE CAN'T
22 DO MORE. HERE'S OUR WORK AROUND. AND THEN WE'LL SEE IF
23 THAT IS GOOD ENOUGH.

24 MR. RUSSELL: OKAY. WE CAN DEFINITELY DO THAT,
25 YOUR HONOR.

1 **MS. NORMAN:** YOUR HONOR, YOU HAVE MADE MY PRIMARY
2 POINT FOR ME.

3 **THE COURT:** OKAY.

4 **MS. NORMAN:** UM, AND PLAINTIFFS ARE WILLING TO BE
5 REASONABLE. WE WANT TO WORK WITH THE DEFENDANTS TO MOVE
6 TOWARD COMPLIANCE. WE DON'T WANT TO BE HERE LITIGATING
7 ABOUT THIS. BUT DEFENDANTS HAVE NOT YET PROVIDED SUFFICIENT
8 INFORMATION FOR US TO EVEN HAVE THAT CONVERSATION. THEY
9 HAVEN'T GIVEN US ENOUGH INFORMATION TO KNOW WHAT ARE THE
10 CONNECTIVITY BARRIERS? WHAT IS THE EXTENT OF THE BARRIERS
11 AT EACH INSTITUTION? HOW MANY COMPUTERS DO THEY NEED TO
12 BUY? HOW MANY DO THEY THINK HE CAN BUY? WHAT IS THEIR
13 PROPOSED ALTERNATIVE? WE HAVEN'T GOTTEN THAT.

14 **THE COURT:** YES.

15 **MS. NORMAN:** SO WE CAN'T EVEN HAVE THAT
16 CONVERSATION YET, YOUR HONOR.

17 **THE COURT:** SO LET'S DO THAT TO THE EXTENT YOU
18 CAN'T COMPLY OR KNOW ALREADY THAT YOU WON'T BE ABLE TO
19 COMPLY, TELL THEM ABOUT IT. TELL THEM WHAT YOUR PROBLEMS
20 ARE AND HOW YOU PROPOSE TO SOLVE THEM AND TRY TO WORK IT OUT
21 WITH THEM.

22 **MR. RUSSELL:** OKAY. WE CAN DO THAT, YOUR HONOR.

23 **THE COURT:** WHAT ELSE?

24 **MR. RUSSELL:** UM, YOUR HONOR, THE OTHER, AND THIS
25 MIGHT GO HAND IN HAND WITH THAT ISSUE.

1 **THE COURT:** YOU'RE TALKING ABOUT THE 120-DAY
2 DEADLINE ON THE ATTORNEY TRAININGS?

3 **MR. RUSSELL:** WELL, CERTAINLY -- CERTAINLY THAT.
4 UM, EVEN BEFORE THAT, THOUGH, IS -- IS, AND I WILL WROTE IT
5 DOWN, BUT -- BUT ONE OF THE PROBLEMS WE ALSO HAVE ARE -- ARE
6 THE PERSONS WHO ARE ACTUALLY GOING TO ACCESS DECKS AND --
7 AND WHO WILL BE REQUIRED TO ACCESS DECKS. AND THIS GOES
8 INTO THE WHOLE ISSUE OF THE CHANGES IN POLICY OF PROCEDURES
9 FOR THE CORRECTIONAL COUNSELORS' ONES. UM, WE HAVE BEEN --
10 WE HAVE BEEN ATTACKED FOR OSTENSIBLY DELAYING THE PROCESS.

11 **THE COURT:** OKAY. WE'RE GOING TO GET INTO ALL THE
12 STATUS CONFERENCE ISSUES. I WAS TRYING TO SET ASIDE THE
13 RECONSIDERATION ISSUES SO --

14 **MR. RUSSELL:** OKAY.

15 **THE COURT:** -- IF IT'S SOMETHING THAT ALSO COMES
16 UP IN THE STATUS CONFERENCE, LET'S MOVE ON TO THAT.

17 **MR. RUSSELL:** WELL, BUT THAT IS PART OF THE
18 COURT'S ORDER THAT ALL CC-1S WILL BE CHECKING DECKS. AND
19 THAT THEY -- AND THAT WE NEED TO CERTIFY THAT THEY'RE DOING
20 SO WITHIN 30 DAYS.

21 **THE COURT:** OKAY.

22 **MS. NORMAN:** AND, YOUR HONOR, WE DON'T BELIEVE
23 THAT THERE'S ANY CIRCUMSTANCE TO WARRANT RECONSIDERATION OF
24 THE ORDER. WE CAN TALK ABOUT THE EXTENT OF DEFENDANT'S
25 COMPLIANCE WITH THE ORDER. WE'RE READY TO DO THAT. BUT WE

1 DON'T THINK THAT THE ORDER NEEDS RECONSIDERATION. THERE IS
2 NO MISTAKE OR SURPRISE OR ANY OTHER GROUND.

3 **THE COURT:** WELL, IS THIS AN ISSUE OF WHETHER THEY
4 HAVE THEIR OWN WORK STATION OR NOT?

5 **MS. NORMAN:** NO, YOUR HONOR. IT IS AN ISSUE OF
6 WHETHER THEY SHOULD BE INSTRUCTED TO USE DECKS.

7 **THE COURT:** THIS IS THE BARGAINING PROCESS?

8 **MS. NORMAN:** YES.

9 **MR. RUSSELL:** YES, YOUR HONOR.

10 **THE COURT:** OKAY. WELL, WE'LL TALK ABOUT THE
11 BARGAINING PROCESS, BUT, UM, IS THERE SOME OTHER PROBLEM?

12 **MR. RUSSELL:** WELL, YOUR HONOR, AS THE MATTERS NOW
13 STAND, I'M SUPPOSED TO HAVE A DECLARATION FOR MY OTHER JAMES
14 TILTON, THE SECRETARY OF THE CCR OR HIS DESIGNEE, SAYING
15 THAT ALL CC-1S ARE NOW REQUIRED TO CHECK THE DECK SYSTEM.
16 AND AT THE AUGUST 16 HEARING I EXPLAINED TO THE COURT THIS
17 IS A LABOR ISSUE. WE WILL PRESENT THAT TO LABOR.

18 **THE COURT:** YES.

19 **MR. RUSSELL:** AND I WILL REPORT TO THE COURT AS TO
20 WHERE WE STAND.

21 **THE COURT:** SO I THINK YOUR DECLARATION WOULD SAY
22 WE CALLED THE UNION ON THUS AND SUCH DATE. WE ASKED FOR THE
23 FIRST AVAILABLE MEETING. THE FIRST ONE WE GOT WAS THIS. WE
24 HAD THAT MEETING. HERE WAS OUR POSITION. HERE WAS THEIR
25 POSITION, ETC., AND EXPLAINING WHY YOU, HOW HARD YOU TRIED,

1 AND WHY YOU HAVE NOT YET BEEN ABLE TO REACH AN AGREEMENT.

2 NOW, THE INFORMATION I'M GETTING FROM THE UNION
3 IS THAT IT SHOULD BE A PRETTY SIMPLE PROCESS AND THEY'RE
4 AMENABLE TO BARGAINING. I DON'T KNOW WHETHER, HOW HARD
5 YOU'VE TRIED. I DON'T KNOW HOW MANY MEETINGS THERE HAVE
6 BEEN, WHAT POSITIONS HAVE BEEN TAKEN, BUT THAT OUGHT TO BE
7 IN YOUR DECLARATION.

8 MR. RUSSELL: OKAY. WELL, WE CAN PROVIDE THAT,
9 YOUR HONOR.

10 THE COURT: OKAY.

11 MR. RUSSELL: BUT THAT DOESN'T COMPLY WITH THE
12 SEPTEMBER 11 ORDER.

13 THE COURT: WELL, NOTHING REQUIRES SOMETHING
14 THAT'S IMPOSSIBLE. IT REQUIRES ONLY THAT YOU DO THE BEST
15 YOU TRULY CAN. AND IF YOU TRULY DO THE BEST YOU CAN, THEN
16 NO ONE CAN ASK FOR MORE. BUT THAT MEANS, YOU KNOW, YOU
17 DON'T WAIT TWO WEEKS AND THEN CALL THEM. YOU CALL THEM THE
18 NEXT DAY AND YOU DON'T SAY, OH, I CAN'T MEET WITH YOU FOR
19 ANOTHER THREE WEEKS. YOU MEET WITH THEM AS SOON AS THEY'RE
20 AVAILABLE. IF THEY TAKE A REASONABLE POSITION, YOU
21 ACCOMMODATE IT, ETC.

22 MR. RUSSELL: OKAY.

23 MS. NORMAN: AND, YOUR HONOR, IF YOU HAVE ANY, I
24 DON'T KNOW WHETHER YOU WANT TO DISCUSS THE STATUS OF THE
25 NEGOTIATIONS WITH THE UNION AT THIS POINT. UM, MR. ADAM IS

1 AVAILABLE TO TALK ABOUT THAT. AND WE COULD TELL YOU WHAT WE
2 KNOW.

3 **THE COURT:** OKAY. WELL, THAT IS SOMETHING THAT'S
4 ON THE AGENDA FOR THE STATUS CONFERENCE. I ONLY HAVE ABOUT
5 15 MORE MINUTES BECAUSE I'VE GOT A TRIAL GOING AND I HAVE
6 MORE PEOPLE COMING BACK. SO --

7 **MR. ADAM:** I'LL TAKE ABOUT 30 SECONDS BUT IF YOU
8 WANT TO DO THE STATUS CONFERENCE.

9 **THE COURT:** WELL, WHY DON'T YOU -- LET'S DO IT
10 RIGHT NOW WHILE WE'RE ON IT.

11 **MR. ADAM:** OKAY, YOUR HONOR --

12 **THE COURT REPORTER:** IDENTIFY YOURSELF.

13 **MR. ADAM:** YES. SORRY.

14 GREG ADAM, CARROLL BURDICK & MCDONOUGH ON BEHALF
15 OF CCPOA, AN AMICUS IN THIS CASE.

16 YOUR HONOR, WE'RE NOW THREE MONTHS, I THINK IT'S
17 AUGUST 16 HEARING. WE'RE NOW IN APPROXIMATELY NOVEMBER 15
18 TODAY, APPROXIMATELY THREE MONTHS LATER.

19 THERE HAVE BEEN NO NEGOTIATIONS WHATSOEVER ON THIS
20 DECKS ISSUE. AND THAT'S DESPITE -- THAT'S BASED ON A CALL
21 TO MY CLIENT ABOUT TEN MINUTES BEFORE I CAME IN THIS
22 COURTROOM.

23 THERE WAS DISCUSSIONS, TELEPHONIC DISCUSSIONS
24 TODAY, I'M TOLD, WITH CDCR ON CHOOSING DATES. SO I NOTE
25 THAT IN DEFENDANT'S PAPERS, PAGE 17, LINE 25, AND AT LINE

1 28, THESE STATE THE NEGOTIATIONS ARE ONGOING. THERE IS NO
2 NEGOTIATIONS IN TERMS OF A BACK AND FORTH ONGOING. THERE'S
3 BEEN DISCUSSIONS ABOUT SETTING UP A TIME TO MEET AND CONFER.
4 BUT THE COURT IS POINTING EXACTLY TO HOW URGENTLY OR THE
5 DEFENDANTS TREATING THIS MATTER AND I'M HERE TO TELL YOU NOT
6 VERY.

7 **THE COURT:** OKAY.

8 **MR. RUSSELL:** THAT CERTAINLY IS DIFFERENT THAN
9 WHAT I HAVE HEARD FROM MY CLIENT, YOUR HONOR.

10 **THE COURT:** AND WHO CALLED WHO AT THE UNION WHEN?

11 **MR. RUSSELL:** MY UNDERSTANDING FROM THE CHIEF
12 COUNSEL OF THE DEPARTMENT OF PERSONNEL IS THAT PROPOSED
13 POLICIES AND PROCEDURES WERE PROVIDED TO THE CCPOA ON
14 NOVEMBER 2.

15 THE REQUEST FOR A WAIVER WAS MADE ON AUGUST 31.
16 AND WAS REJECTED BY THE CCPOA ON SEPTEMBER 6.

17 ON SEPTEMBER 6, BY MAKING THAT REJECTION, THE
18 CCPOA KNEW, UNDER THE MEMORANDUM OF UNDERSTANDING, THAT
19 PROPOSED POLICIES AND PROCEDURES WOULD HAVE TO BE DRAFTED.
20 THAT'S NOT SOMETHING THAT CAN BE DONE IN 24 OR 48 HOURS. IT
21 DID TAKE LONGER THAN WE HAD HOPED. IT TOOK UNTIL NOVEMBER 2
22 BUT THOSE HAD BEEN PROVIDED TO CCPOA AND WE'VE HEARD NOTHING
23 FROM THE LAST 14 DAYS FROM THEM.

24 **MS. NORMAN:** YOUR HONOR, CAN I JUST MAKE ONE
25 POINT?

1 BEFORE WE FILED THIS MOTION IN JUNE --

2 **THE COURT:** WHICH MOTION?

3 **MS. NORMAN:** THE MOTION THAT RESULTED IN THE
4 SEPTEMBER 11 ORDER.

5 **THE COURT:** OH.

6 **MS. NORMAN:** BEFORE WE FILED THE MOTION,
7 DEFENDANTS HAD ALREADY DRAFTED DRAFT POLICIES AND PROCEDURES
8 FOR NEGOTIATION WITH THE UNION.

9 NOW, I'M SURE THAT THEY NEED TO BE REVISED IN SOME
10 RESPECTS. BUT I DON'T UNDERSTAND WHY IT HAS TAKEN THEM
11 ALLEGEDLY UNTIL NOVEMBER 2 TO ACTUALLY DRAFT SOMETHING THAT
12 THEY COULD GIVE TO THE UNION.

13 **THE COURT:** UM, WHAT ABOUT THESE CLAIMS THAT ARE
14 --

15 **MR. ADAM:** I BELIEVE THAT IT'S ALREADY BEEN
16 DISCUSSED IN THIS CASE IN PRIOR HEARINGS. MR. YANK WAS AT
17 PRIOR HEARINGS ON BEHALF OF THE UNION.

18 BUT WE DON'T NEED FINAL POLICIES TO DISCUSS. WE
19 CAN USE DRAFT POLICIES. IT'S BASICALLY AN EXCHANGE, MEET
20 AND CONFER PROCESS IS AN EXCHANGE WHERE OUR PEOPLE GIVE
21 FEEDBACK AN ACTUAL IMPLEMENTATION SO THAT DOES NOT REQUIRE
22 FINAL POLICIES.

23 AND THE BOTTOM LINE IS THEIR PAPERS SAY THAT IS
24 NEGOTIATION HAVE TAKEN PLACE. THERE IS NO NEGOTIATIONS HAVE
25 TAKEN PLACE. WE WENT THREE MONTHS. ALL WE MANAGED TO DO IS

1 TO GET CDCR TO CALL ABOUT DATES.

2 **THE COURT:** I GUESS THEY'RE REFERRING TO WRITTEN
3 NEGOTIATIONS IN THE SENSE OF SENDING YOU PAPERS. DID YOU
4 GET THOSE PAPERS THAT THEY SAY THEY SENT?

5 **MR. ADAM:** I'M SURE WE GOT SOME PAPER. I DON'T
6 KNOW THE ANSWER TO THAT BUT RECEIVING PAPERS IS NOT
7 NEGOTIATING. THERE'S WHEN YOU SIT DOWN FACE TO FACE,
8 DISCUSS WHAT'S THE CHANGES, WHAT'S YOUR VIEWS, DO YOU HAVE
9 ANY SUGGESTIONS YOU WANT TO MAKE? THERE'S A REQUIREMENT OF
10 MANAGEMENT SITE TO CONSIDER THOSE IN GOOD FAITH. MANAGEMENT
11 DOES WANT TO, IT CAN WALK OFF. THAT'S THE PROCESS. IT NEED
12 NOT TAKE THESE MONTHS. AND MR. WISE'S DECLARATION SPEAKS
13 EXACTLY TO THAT.

14 **THE COURT:** YEAH. SO IT SOUNDS LIKE YOU NEED TO
15 GET TO WHOEVER IT IS THAT INITIATES THIS MEETING AND HAVE
16 THEM CALL THE UNION THIS AFTERNOON FOR FIRST THING TOMORROW
17 MORNING AND SET UP THE FIRST AVAILABLE DATE WHICH SHOULD BE,
18 I SHOULD THINK, IN A COUPLE OF DAYS. NOT A COUPLE OF WEEKS.

19 **MR. RUSSELL:** WE'LL DO THAT, YOUR HONOR. WE WERE
20 WAITING TO HEAR RESPONSES, NOT A DRAFT POLICIES AND
21 PROCEDURES, BUT THE APPLIED POLICIES AND PROCEDURES.

22 **THE COURT:** RIGHT. BUT WE DISCUSSED THIS BEFORE.
23 COUNSEL'S RIGHT. WE DID DISCUSS THIS AT THE LAST HEARING,
24 AND MR. YANK DID SAY, AND I NOW REMEMBER, THAT YOU DON'T
25 HAVE TO HAVE THE FINAL POLICY TO START DISCUSSING SO THEY'LL

1 BE HAPPY TO TALK TO YOU EVEN THOUGH YOU DON'T HAVE A FINAL
2 POLICY. SO LET'S HOPE THAT THAT GETS DONE THAT THE
3 APPOINTMENT IS MADE THIS AFTERNOON OR TOMORROW MORNING AND
4 THAT THE DATE IS SET FOR, WELL, WE GOT THANKSGIVING COMING
5 UP. BUT VERY SHORTLY AFTER THANKSGIVING FOR A FACE-TO-FACE
6 SIT DOWN WITH DECISION MAKERS AND WHATEVER DOCUMENTS ARE
7 AVAILABLE AT THAT TIME.

8 **MR. RUSSELL:** CDCR WILL MAKE IT'S BEST EFFORTS TO
9 DO ALL OF THAT, YOUR HONOR.

10 **THE COURT:** OKAY.

11 **MR. ADAM:** I'LL TELL MY FOLKS TO EXPECT A CALL.
12 THANK YOU.

13 **THE COURT:** AND THAT'S ON TWO ISSUES, I THINK,
14 AREN'T THERE TWO THINGS THAT HAVE TO BE NEGOTIATED WITH THE
15 PLA OR IS IT JUST THE ONE?

16 **MS. NORMAN:** THE CCPOA COVERS BOTH THE
17 CORRECTIONAL COUNSELORS AND THE PAROLE AGENTS. SO TO THE
18 EXTENT THAT DEFENDANTS ARE SAYING THAT THEY CANNOT IMPLEMENT
19 PAROLE AGENTS CHECKING DECKS BECAUSE THEY NEED TO
20 NEGOTIATION WITH THE UNION, THEY NEED TO BE TALKING TO THE
21 CCPOA ABOUT THAT AS WELL.

22 **THE COURT:** OKAY.

23 SO WAS THERE ANYTHING ELSE ON THE RECONSIDERATION
24 OR CAN WE TURN TO THE STATUS CONFERENCE?

25 **MR. RUSSELL:** UM --

1 **THE COURT:** OH, YOU HAD THE PROBLEM WITH THE 120
2 DAYS WITH THE LAWYERS?

3 **MR. RUSSELL:** YES. THE TRAINING OF THE BHA PANEL
4 ATTORNEYS.

5 UM, MY UNDERSTANDING INITIALLY IS THAT -- IS THAT
6 BPH PANEL ATTORNEYS DO RECEIVE ONLINE TRAINING IN DISABILITY
7 AND EFFECTIVE COMMUNICATION.

8 **THE COURT:** RIGHT. BUT THERE IS A SPECIFIC
9 PROGRAM THAT THEY WERE GOING TO DO.

10 **MR. RUSSELL:** THERE IS A -- WELL, THERE IS A
11 SPECIFIC PROGRAM THAT IS UNDERTAKEN BY CALPAC ATTORNEYS BUT
12 NOT BY BPH. IF THIS -- THIS AGAIN IS SOMETHING THAT --

13 **THE COURT:** RIGHT. BUT THAT WAS -- THAT'S NOT
14 RECONSIDERATION. AND THAT'S SOMETHING I SAID IN AUGUST AND
15 I SAID AGAIN IN SEPTEMBER. THAT YOU DO THE CALPAC PROGRAM,
16 NOT THE OTHER PROGRAM THAT YOU WERE PROPOSING.

17 TO THE EXTENT YOU HAVE A PROBLEM WITH THE DEADLINE
18 I THINK THE SAME WOULD APPLY. IF YOU SHOW THE EFFORTS
19 YOU'VE MADE TO COMPLY WITH THE DEADLINE, AND YOU SHOW WHY IT
20 WAS YOU WERE UNABLE TO DO SO, THEN WE WOULD CERTAINLY
21 CONSIDER THAT.

22 **MR. RUSSELL:** I GUESS, I -- I GUESS MY ISSUE, YOUR
23 HONOR, IS WHAT MECHANISM -- I MEAN THE ORDERS, AS IT STANDS,
24 IS THE ORDER OF THIS COURT. AND -- AND WE CAN COME IN AND
25 PROVIDE TO THE COURT OUR, YOU KNOW, EVIDENCE OF THE EFFORTS

1 THAT HAVE BEEN UNDERTAKEN BY CDCR, TO, FOR EXAMPLE, PROVIDE
2 WORK IN ROUNDS WITH THIS IDEA OF EVERYONE HAVING A WORK
3 STATION OR TRYING TO PROVIDE ALTERNATIVES.

4 **THE COURT:** WELL, YOU DON'T NEED TO DO. THE THING
5 TO DO IN THE FIRST INSTANCE IS TO GO TO PLAINTIFFS BECAUSE
6 THEY SEEM TO BE, GENERALLY SPEAKING, WILLING TO WORK WITH
7 YOU AND WILLING TO NEGOTIATE THINGS AND WILLING TO ACCEPT
8 REASONABLE, UM, SOLUTIONS AND REASONABLE EFFORTS TO COMPLY
9 AND SO ON. SO BEFORE YOU SEND IT TO ME, SEND IT TO THEM AND
10 SEE IF YOU CAN'T WORK SOMETHING OUT.

11 **MR. RUSSELL:** OKAY.

12 **MS. NORMAN:** WE'LL BE HAPPY TO DISCUSS THAT WITH
13 THEM, YOUR HONOR.

14 **THE COURT:** PARDON?

15 **MS. NORMAN:** WE WOULD BE HAPPY TO DISCUSS THAT
16 WITH THEM, YOUR HONOR.

17 **THE COURT:** YEAH. I MEAN DON'T WORRY SO MUCH
18 ABOUT NOT BEING IN TECHNICAL COMPLIANCE. YOU HAVEN'T BEEN
19 IN COMPLIANCE WITH TEN YEARS AND NOTHING HAS HAPPENED. SO
20 WE'RE JUST WORKING ON YOU DOING YOUR BEST.

21 **MR. RUSSELL:** OKAY. WE WILL -- WE WILL CONTINUE
22 THAT PROCESS, YOUR HONOR.

23 **THE COURT:** OKAY.

24 SO CAN WE MOVE ON TO THE STATUS CONFERENCE?

25 **MS. NORMAN:** YES.

1 **THE COURT:** OKAY.

2 SURVEY OF ACCESSIBLE HOUSING.

3 UM, NOW, HERE IS ANOTHER ONE. YOU SAY YOU DIDN'T
4 WANT TO THROUGH AN EMPTY EXERCISE OF TELLING THEM THINGS
5 THAT YOU WERE TOLD TO TELL THEM. IT DOESN'T MATTER IF IT'S
6 AN EMPTY EXERCISE. YOU NEED TO TELL THEM THINGS THAT YOU
7 WERE TOLD TO TELL THEM.

8 **MR. RUSSELL:** WELL, WE DID, YOUR HONOR. IT
9 TOOK -- IT TOOK THREE WEEKS LONGER THAN WE HAD HOPED BUT WE
10 DID DO THAT.

11 **THE COURT:** WELL, I KNOW BUT WHEN THE DEADLINE
12 COMES, WELL, THEN, YOU WRITE TO THEM OR CALL THEM AND E-MAIL
13 AND SAID WE KNOW WE WERE SUPPOSED TO DO THIS TODAY AND WE
14 CAN'T AND HERE'S WHY WE CAN'T. NOT JUST WAIT FOR THREE
15 WEEKS AND THEN RETROACTIVELY EXPLAIN WHY YOU DIDN'T. JUST
16 DO IT ON THE DAY IT'S DUE AND THEN EXPLAIN WHY.

17 **MR. RUSSELL:** OKAY. WE WILL DO THAT IN THE
18 FUTURE.

19 **MS. NORMAN:** OR EVEN BEFORE THE DAY THAT IT'S DUE
20 WE'LL BE HAPPY TO TALK BEFOREHAND.

21 **THE COURT:** IF YOU'RE GOING TO BE ABLE TO. YOU
22 MIGHT AS WELL LET THEM KNOW YOU'RE NOT GOING TO BE DONE.

23 **MR. RUSSELL:** OKAY.

24 **THE COURT:** WE'RE TALKING ABOUT COMMUNICATION
25 HERE. AND IF PEOPLE COMMUNICATE WITH EACH OTHER IT IS A LOT

1 EASIER TO GET THINGS DONE THAN IF THEY DON'T.

2 NOW, UM, DO WE NEED TO KNOW, I SHOULDN'T EVEN --

3 **MS. NORMAN:** IF I COULD FOCUS YOUR ATTENTION ON
4 THE MAIN ITEM FOR THE HOUSING INVENTORY, WHAT WE NEED YOUR
5 INTERVENTION ON IS THAT DEFENDANTS FAILED TO INCLUDE ANY
6 INFORMATION ABOUT THE STATE OF REPAIR OF THEIR ACCESSIBLE
7 FEATURES IN THEIR HOUSING UNITS.

8 SO AT YOUR HONOR'S ORDER, WE WENT OUT AND GOT THAT
9 INFORMATION OURSELVES. AND AS WE TOLD YOU, IT WAS
10 INCREDIBLY BURDENSOME AND EXPENSIVE AND WOULD NOT BE VERY
11 DIFFICULT FOR THEM TO DO IT THEMSELVES.

12 YOU ORDERED THEM TO COME UP WITH A PLAN FOR DOING
13 IT. I GAVE THEM MY CHECKLISTS, WHICH A LOT OF PEOPLE AT
14 INSTITUTIONS TOLD ME WERE VERY USEFUL. AND WE'VE HEARD
15 ABSOLUTELY NOTHING FROM THEM SINCE THAT DATE.

16 THEY WERE ORDERED TO PROVIDE US THAT PLAN BY
17 AUGUST 30, AND WE'VE HAD NOTHING.

18 **THE COURT:** OKAY. NOW, THIS IS -- THIS IS THE
19 SURVEY OR THIS IS A DIFFERENT ISSUE?

20 **MS. NORMAN:** THIS IS THE STATE OF REPAIR WHICH IS,
21 UM, AN ESSENTIAL FEATURE OF THE HOUSING SURVEY. SO NOT ONLY
22 TO HAVE THE HOUSING SURVEY INDICATE WHICH -- WHICH
23 PLACEMENTS ARE ACCESSIBLE FOR DISABLED PRISONERS, IT SHOULD
24 INDICATE WHETHER THE TOILETS WORK, WHETHER THE SHOWERS WORK,
25 BECAUSE IF THE ACCESSIBLE SHOWER DOESN'T WORK, IT IS NOT AN

1 ACCESSIBLE LOCATION.

2 **THE COURT:** OKAY. SO WE WERE TALKING ABOUT
3 CERTAIN DISPUTED BEDS WHERE YOU SAID THEY WERE INACCESSIBLE
4 AND THEY SAID THEY WERE ACCESSIBLE BUT NOW THEY AGREE THEY
5 AREN'T ACCESSIBLE.

6 **MS. NORMAN:** THAT IS A SEPARATE ISSUE.

7 **THE COURT:** THAT'S A DIFFERENT ISSUE.

8 **MS. NORMAN:** THAT DOES NOT NEED YOUR ATTENTION AT
9 THIS STATUS CONFERENCE, I BELIEVE. THIS ISSUE IS --

10 **THE COURT:** SO IF YOU WENT AND FOUND OUT THE STATE
11 OF REPAIR, THEN WHAT DO YOU WANT THEM TO DO?

12 **MS. NORMAN:** THEY NEED TO HAVE UP-TO-DATE
13 INFORMATION AS TO WHETHER THESE PLACEMENTS ARE ACCESSIBLE
14 WHICH MEANS WHETHER THE ACCESSIBLE TOILET WORKS.

15 **THE COURT:** BUT HAVEN'T YOU ALREADY DONE THAT FOR
16 THEM AND GIVEN THAT TO THEM?

17 **MS. NORMAN:** WE DID THAT ONCE. WE'VE HAD NO
18 UPDATED HOUSING SURVEY SINCE THEN. BUT ALSO THEY NEED --

19 **THE COURT:** SO WHAT DO WE WANT TO KNOW THAT THEY
20 WERE FIXED OR TO HAVE ANOTHER, WELL, I GUESS, ANOTHER SURVEY
21 WOULD TELL US THEY WERE FIXED.

22 **MS. NORMAN:** THEY NEED TO DO THIS REGULARLY. THEY
23 NEED TO HAVE A PLAN THAT LETS THE PEOPLE WHO ARE MAKING
24 DECISIONS ABOUT WHERE -- WHERE THIS WHEELCHAIR USER WILL GO.
25 WILL HE GO DO AVENOL BUILDING 550? WELL, ARE

1 THERE ENOUGH ACCESSIBLE TOILETS FOR THEM THERE? THERE MIGHT
2 BE ON PAPER A PLACE FOR WHEELCHAIR USER BUT IF THERE'S ONE
3 WHEELCHAIR ACCESSIBLE SHOWER AND THIS SHOWER IS BROKEN, THAT
4 THAT IS OFFLINE. FOR WHEELCHAIR USERS, THEIR SURVEY DOES
5 NOT INCLUDE THAT INFORMATION. AND TO GET THERE, THEY HAVE
6 TO KNOW WHETHER THE SHOWERS ARE BROKEN AND THEY DON'T HAVE A
7 SYSTEM FOR DOING THAT.

8 THE COURT: OKAY. SO YOU DID IT AS OF WHEN?

9 MS. NORMAN: WE DID IT AS OF, UM, IT WAS THE
10 SUMMER. IT WAS JULY/AUGUST. JULY.

11 THE COURT: HAVE I ORDERED THEM TO DO ANOTHER ONE?

12 MS. NORMAN: YOU --

13 THE COURT: I REMEMBER SAYING WHY DON'T YOU JUST
14 DO IT IF THEY'RE NOT GOING TO?

15 MS. NORMAN: RIGHT.

16 THE COURT: THEN WHAT ELSE HAPPENED?

17 MS. NORMAN: YOU ORDERED THEM TO, I'M QUOTING FROM
18 YOUR ORDER OF SEPTEMBER 12, "TO DEVELOP A PLAN TO REGULARLY
19 MONITOR THE STATE OF REPAIR OF ACCESSIBLE HOUSING FEATURES
20 AND TO PROVIDE IT IN WRITING TO PLAINTIFFS BY THURSDAY,
21 AUGUST 30."

22 THE COURT: OH. OH. A PLAN TO DO IT.

23 MS. NORMAN: A PLAN TO DO IT. EXACTLY.

24 THE COURT: OKAY.

25 SO WHERE IS YOUR PLAN TO DO IT?

1 **MR. RUSSELL:** IT IS NOT IN THE PLANS, YOUR HONOR.
2 BUT WHAT I DO UNDERSTAND IS IN THIS BUDGET CHANGE PROPOSAL,
3 THERE IS A PROVISION THAT WILL GO WITH INDEX THAT DOES TRACK
4 THE INFORMATION FOR THE ACCESSIBILITY FEATURES IN THESE
5 LOCATIONS. IT WAS MY OVERSIGHT ON THIS PART OF THE ORDER.

6 I WAS FOCUSING ON THE STATS THAT WERE PREPARED OF
7 THE FEATURES THAT WERE ADDRESSED IN THE CASE MANAGEMENT
8 CONFERENCE STATEMENT.

9 I WILL -- I WILL CHECK WITH MY CLIENTS TO FIND OUT
10 WHERE WE ARE AT ON THAT. BUT I DO UNDERSTAND THAT AS PART
11 OF A BUDGET CHANGE PROPOSAL THERE IS A COMPONENT TO BE ADDED
12 TO THE DECK SYSTEM WHEREBY INFORMATION REGARDING THE SHOWER
13 HEADS, THE TOILETS, WHETHER THE TOILET IS BACKED UP, THE
14 STATUS OF THE SHOWER BENCHES, THE -- THE FRICTION STRIPS ON
15 RAMPS, WHETHER OR NOT THOSE THINGS ARE IN PLACE.

16 ONE OF THE PROBLEMS, YOU CAN SEE, YOUR HONOR, BUT
17 I DO BELIEVE IT IS BEING -- IT'S AT LEAST BEING CONSIDERED
18 IS, HOW DO YOU TRACK A CLOGGED TOILET? I MEAN IF A TOILET
19 IS CLOGGED FOR AN HOUR, IT MAY -- I MEAN THAT IS A PROBLEM
20 FOR THAT HOUR. IF THE TOILET IS CLOGGED FOR 72 HOURS, I
21 GRANT YOU THAT THAT IS A BIG PROBLEM WHERE INMATES WILL
22 START NEEDING TO BE MOVED AROUND. AND MY UNDERSTANDING THAT
23 IS THE KIND OF INFORMATION THAT IS GOING TO BE A COMPONENT
24 OF THE -- OF THE REVISED DECK SYSTEM THAT CAN BE TRACKED.

25 **THE COURT:** OKAY. BUT WHAT WE NEED IS THE PLAN.

1 **MR. RUSSELL:** OKAY.

2 **THE COURT:** THE DECK SYSTEM IS -- IS PERHAPS THE
3 SOLUTION. BUT WE NEED TO HAVE YOU SAY, HERE'S HOW WE'RE
4 GOING TO SOLVE THE PROBLEM. AND MAYBE YOU CAN'T ACTUALLY DO
5 IT UNTIL YOU GET MORE MONEY IF IT'S AN EXPENSIVE THING, BUT
6 MAYBE YOU NEED AN INTERIM PLAN THAT ISN'T SO EXPENSIVE THAT
7 YOU CAN DO NOW WHILE YOU'RE WAITING FOR THE MONEY TO DO A
8 BETTER PLAN.

9 BUT AT LEAST PRESENTING THE PLAN WON'T BE
10 EXPENSIVE AT ALL PRACTICALLY. SO THAT YOU NEED TO DO.

11 **MR. RUSSELL:** OKAY.

12 **THE COURT:** AND IT BETTER HAVE AN INTERIM, IF THE
13 PLAN IS SOMETHING THAT YOU KNOW YOU CAN'T DO FOR A WHILE,
14 THEN YOU'RE GOING TO NEED AN INTERIM PLAN AS WELL THAT IS
15 GOING TO EXPLAIN HOW PEOPLE ARE GOING TO GET TO USE THE
16 RESTROOMS IN THE MEANTIME.

17 **MR. RUSSELL:** RIGHT. AND I HAVE BEEN DISCUSSING
18 THAT WITH MY CLIENTS AS WELL, YOUR HONOR.

19 **THE COURT:** WHEN WILL YOU HAVE THAT PLAN? A WEEK?
20 WELL, WE GOT THANKSGIVING NEXT WEEK.

21 **MS. NORMAN:** YOUR HONOR, GIVEN THAT THEY WERE
22 ORDERED TO PROVIDE THEIR INFORMATION IN YOUR JANUARY
23 INJUNCTION, GIVEN THAT WE INCLUDED A VERY CLEAR STATEMENT OF
24 OUR CONCERNS ON THIS ISSUE IN THE OCTOBER 23 CASE MANAGEMENT
25 CONFERENCE STATEMENT WHICH ACTUALLY WAS PROVIDED TO

1 DEFENDANTS TWO WEEKS PRIOR TO THAT DATE SO THAT WE COULD,
2 YOU KNOW, GO BACK AND FORTH ON IT, I THINK -- I THINK A WEEK
3 PLUS, YOU KNOW, THE EXTRA TWO DAYS FOR THE THANKSGIVING
4 HOLIDAY, A WEEK FROM MONDAY IS ENTIRELY ADEQUATE.

5 THE COURT: OKAY.

6 MR. RUSSELL: EXCUSE ME FOR A SECOND, YOUR HONOR.
7 UM, WHAT DAY ARE WE TALKING ABOUT, YOUR HONOR?

8 THE COURT: THE TWENTY-SIXTH OF NOVEMBER. A WEEK
9 FROM MONDAY. THE MONDAY AFTER THANKSGIVING.

10 MR. RUSSELL: COULD WE MAKE IT THE THIRTIETH, THAT
11 FRIDAY?

12 THE COURT: OKAY.

13 MR. RUSSELL: OKAY. THANK YOU, YOUR HONOR.

14 THE COURT: BUT DON'T JUST THINK ABOUT THE PLAN.
15 THINK ABOUT DOING IT, TOO.

16 MR. RUSSELL: RIGHT. RIGHT.

17 THE COURT: UM, OKAY.

18 SIGN LANGUAGE INTERPRETERS, YOU SAY YOU'RE
19 EXPLORING THE OPTION OF USING VIDEO CONFERENCING.

20 WE NEED A PROPOSAL ON THAT.

21 MR. RUSSELL: YOUR HONOR, WHAT I DO KNOW IS THAT
22 THE REMAINING OPEN POSITIONS, THE FOUR SIGN LANGUAGE
23 INTERPRETER POSITIONS HAVE NOW BEEN FILLED. THERE ARE NO
24 OPEN SIGN LANGUAGE POSITIONS FOR PERMANENT STAFF ON CDCR.

25 WHAT I THINK WE'RE TALKING ABOUT IS A PROPOSAL FOR

1 THE USE OF VIDEO CONFERENCING IN THOSE INSTANCES IN WHICH A
2 SHINE LANGUAGE INTERPRETER IS NOT IMMEDIATELY AVAILABLE. IF
3 THAT'S NOT THE CASE, UM, I'D LIKE -- I DON'T -- I GUESS I
4 DON'T KNOW WHAT THE PROPOSAL IS AT THIS POINT.

5 **MS. NORMAN:** YOUR HONOR, IF I COULD ZERO YOU IN ON
6 THE ISSUE.

7 **THE COURT:** IT'S ONE THAT, UM, WHERE THERE'S A
8 VERY SMALL POPULATION OF HEARING IMPAIRED PEOPLE. AND,
9 THEREFORE, PERHAPS YOU DON'T HAVE A SIGN LANGUAGE
10 INTERPRETER ON STAFF BECAUSE THERE'S NOT THAT MANY OF THEM.
11 BUT YET EVEN THOSE FEW MIGHT SOMETIME NEED AN INTERPRETER
12 AND YOU WERE GOING TO DO THAT BY WAY OF VIDEO CONFERENCE.

13 **MR. RUSSELL:** MY UNDERSTANDING THAT IS DONE BY
14 CONTRACT STAFF, YOUR HONOR.

15 **THE COURT:** THAT'S ALWAYS BEEN A PROBLEM. THAT'S
16 WHY WE WENT TO THE POSITIONS BECAUSE WE COULDN'T ALWAYS GET
17 CONTRACT STAFF. AND THEN YOU SAID WELL, WE'LL HAVE THE
18 POSITIONS AND THAT'S FINE FOR THE ONES THAT WE HAVE. BUT
19 FOR THE ONES THAT WE DON'T HAVE, I THINK YOU SAID YOU WERE
20 GOING TO USE VIDEO CONFERENCING. BECAUSE THE CONTRACT STAFF
21 DIDN'T WORK. THEY JUST -- THEY WEREN'T THERE OR WASN'T
22 WORKING. THEY DIDN'T GET THERE ON TIME. THERE WEREN'T
23 ENOUGH OF THEM BUT I DON'T KNOW WHAT THE PROBLEM WAS. BUT
24 CLEARLY IT WASN'T WORKING.

25 SO IF YOU SAID YOU WERE GOING TO DO VIDEO

1 CONFERENCING, THEN IT SEEMS LIKE YOU WOULD NEED TO MAKE A
2 PROPOSAL ABOUT THAT.

3 MR. RUSSELL: OKAY.

4 THE COURT: AM I GETTING IT RIGHT?

5 MS. NORMAN: YES. I MEAN OUR POSITION IS THAT THE
6 INJUNCTION IN JANUARY CLEARLY REQUIRES THEM TO HAVE
7 INTERPRETERS ON STAFF EVEN FOR THOSE SMALL POPULATIONS. BUT
8 WE'RE WILLING TO, AS THE INJUNCTION SAYS, WE'RE WILLING TO
9 ENTERTAIN A PLAN. SO THEY'RE OUT OF COMPLIANCE WITH THAT
10 JANUARY INJUNCTION UNLESS AND UNTIL THEY PROVIDE A
11 REASONABLE PLAN WITH US -- TO US. AND I THINK AT THIS POINT
12 YOUR HONOR SHOULD SET A DATE FOR THEM TO PROVIDE THAT PLAN.

13 THE COURT: HOW MANY INSTITUTIONS ARE THERE THAT
14 DON'T HAVE ON STAFF SIGN LANGUAGE INTERPRETERS NOW?

15 MS. NORMAN: WELL, MOST OF THE INSTITUTIONS DON'T
16 HAVE THEM. BUT I THINK ONLY A FEW SHOULD -- SHOULD HAVE
17 THEM GIVEN THE POPULATION OF, FOR EXAMPLE, SEVERELY MENTALLY
18 ILL PRISONERS WHO ALSO MAY BE DEAF. UM, SO I BELIEVE IT'S
19 SOMETHING IN THE RANGE OF FOUR TO EIGHT ADDITIONAL
20 INSTITUTIONS. I'M NOT POSITIVE ABOUT THE NUMBERS.

21 MR. RUSSELL: YOUR HONOR, JENNIFER NYGAARD CAN
22 ADDRESS SOME OF THIS ISSUE.

23 MS. NYGUARD: YEAH. THE JANUARY 18 INJUNCTION
24 REQUIRES THE SIGN LANGUAGE INTERPRETERS AT INSTITUTIONS
25 DESIGNATED TO HOUSE THE DPH, THE HEARING-IMPAIRED INMATES.

1 SIGN LANGUAGE INTERPRETERS WERE HIRED AT EIGHT OF THOSE. I
2 BELIEVE THERE'S ONLY ABOUT THREE AT SAN QUENTIN CONDEMNED.
3 UM, CNC.

4 MS. NORMAN: IT'S SOMETHING IN THAT RANGE.

5 MS. NYGUARD: THERE'S ONLY, WHERE'S THERE'S ONLY A
6 HANDFUL. AND ORIGINALLY THE PLAN WAS LET'S GET THE EIGHT
7 HIRED ON STAFF AT THE INSTITUTIONS WITH THE LARGER
8 POPULATIONS AND THEN UTILIZE THEM, THOSE INTERPRETERS, BY
9 VIDEO CONFERENCE TO ACCOMMODATE THE NEEDS AT THE SMALLER
10 INSTITUTIONS OR THE SMALLER POPULATIONS.

11 SO THAT WAS THE ORIGINAL PLAN. AND, UM, I BELIEVE
12 SINCE WE HAVE HIRED THE EIGHT NOW, AND WE HAD TALKED ABOUT
13 USING SIGN LANGUAGE INTERPRETATION BY VIDEO CONFERENCE IN
14 OTHER AREAS, TOO, BUT WE HAVEN'T HATCHED OUT ANY OF THE
15 GRITTY DETAILS ABOUT IT.

16 THE COURT: SO THAT'S WHAT WE NEED THEN. WE NEED
17 A PLAN THAT SAYS HOW ARE WE ARE GOING TO PROVIDE SIGN
18 LANGUAGE SERVICES AT THESE THREE OR FOUR PRISONS THAT AREN'T
19 COVERED YET. AND THAT WILL HAVE TO BE EITHER HIRING AN
20 INTERPRETER FOR THOSE THREE OR FOUR, OR VIDEO CONFERENCING.
21 BUT IF VIDEO CONFERENCING, IT HAS TO SAY WE HAVE A CAMERA
22 HERE AND WE HAVE A CAMERA THERE AND WE HAVE SOMEONE WHO
23 WORKS THERE WHO CAN USE THE CAMERA; IN OTHER WORDS, VIDEO
24 CONFERENCING DOESN'T JUST HAPPEN. IT HAS TO HAVE, YOU KNOW,
25 A PLAN.

1 SO HOW ABOUT BY THE THIRTIETH OF NOVEMBER ALSO WE
2 HAVE A PLAN FOR THOSE THREE OR FOUR INSTITUTIONS, BE IT
3 OKAY, WE'LL HIRE SOMEBODY THERE, OR WE CAN DO VIDEO
4 CONFERENCING BECAUSE WE HAVE THE EQUIPMENT ALREADY. OR,
5 WELL, OKAY, WE DON'T HAVE THE EQUIPMENT, BUT WE HAVE THE
6 MONEY TO BUY IT AND WE ARE GOING TO BUY IT BY X DATE. AND
7 THE PERSON WHO IS GOING TO BE ON THE VIDEO CONFERENCING IS
8 GOING TO BE MS. X WHO WORKS THUS AND SUCH PLACE. LIKE THAT.

9 OKAY? OKAY.

10 **MR. RUSSELL:** YOUR HONOR, TO THAT -- TO THAT
11 ISSUE, ONE OF THE THINGS THAT I THINK IS HAPPENING IS, FROM
12 WHAT I UNDERSTAND IN MY DISCUSSIONS WITH MR. SWANSON, IS
13 THAT SOME OF THIS MAY OCCUR THROUGH VIDEO CONFERENCING THAT
14 HAS -- THAT IS BEING DEVELOPED THROUGH THE RECEIVER'S
15 OFFICE. UM THAT THERE ARE VIDEO CONFERENCING CAPABILITIES
16 WITHIN THE MEDICAL, WITH THE MEDICAL STAFF, AND THAT WE
17 MIGHT BE ABLE TO PIGGYBACK ON THAT WITH THE SIGN LANGUAGE
18 INTERPRETATION NEEDS OF THESE FEW PRISONERS IN THOSE
19 INSTITUTIONS.

20 **THE COURT:** WELL, THEN YOU WOULD PUT THAT IN YOUR
21 PLAN --

22 **MR. RUSSELL:** OKAY.

23 **THE COURT:** -- AND THEN EXPLAIN HOW YOU'RE GOING
24 TO USE THAT CAMERA AND THEIR CAMERA EXISTS AND IT'S THERE OR
25 IT DOESN'T EXIST BUT IT'S GOING TO EXIST ON X DATE BEING

1 PAID FOR BY, ETC. I MEAN IT CAN'T BE PIE IN THE SKY. IF
2 THERE REALLY IS A CONCRETE PLAN FOR THAT, THEN GREAT, THAT
3 CAN BE YOUR PLAN. BUT IT CAN'T BE WE'RE GOING TO HOPE THAT
4 THIS HAPPENS SOMETIME IN THE FUTURE BECAUSE SOMEBODY SAID IT
5 MIGHT. OKAY.

6 ADDITIONAL GRIEVANCE STAFF.

7 **MS. NORMAN:** I DON'T BELIEVE THERE IS ANYTHING
8 ELSE IN THE STATUS CONFERENCE THAT REQUIRES, UM, YOUR
9 ATTENTION.

10 **THE COURT:** OH, REALLY.

11 **MS. NORMAN:** UM, BUT YOU MIGHT DISAGREE. ALTHOUGH
12 I WOULD ASK FOR YOUR INDULGENCE FOR TWO MINUTES TO TALK
13 ABOUT THE OUT-OF-STATE MONITORING ISSUE, UM, TO DRAW YOUR
14 ATTENTION TO JUST ONE POINT THERE.

15 **THE COURT:** I GUESS YOU CAN DO THAT.

16 **MS. NYGUARD:** ACTUALLY, THERE IS MORE ON THE
17 STATUS CONFERENCE.

18 **MS. NORMAN:** I'M SO SORRY, YES.

19 **THE COURT:** I HAVE SOME MORE PAGES. I HAVE TO
20 KEEP MY MOUTH SHUT BUT I THOUGHT THERE IS MORE.

21 **MS. NORMAN:** THERE IS MORE.

22 COULD WE QUICKLY ADDRESS THE OUT-OF-STATE
23 CONFERENCING BEFORE --

24 **THE COURT:** NO, BECAUSE I'M TEN MINUTES LATE TO MY
25 NEXT APPEARANCE ALREADY BUT THAT IS GOING TO BE IT ON THE

1 OUT-OF-STATE MONITORING. I WANT TO FINISH UP THE STATUS
2 ISSUES.

3 MS. NORMAN: THANK YOU.

4 THE COURT: SO THERE MAY BE SOME THINGS THAT I
5 THOUGHT WERE A PROBLEM AREN'T SO YOU TELL ME WHAT'S THE
6 PROBLEM.

7 THE COURT REPORTER: IDENTIFY YOURSELF.

8 MS. MANIA: I'M ANNE MANIA, PLAINTIFF'S COUNSEL.
9 WE HAVE FOUR, UM, ISSUES THAT WE ASK YOU TO FOCUS
10 ON.

11 THE COURT: AND THESE ARE BPH ISSUES?

12 MS. MANIA: THESE ARE BPH ISSUES.

13 THE COURT: OKAY. WHAT ARE THEY?

14 MS. MANIA: THE FIRST ONE IS THE REQUIREMENT THAT
15 MENTAL HEALTH CLINICIANS CHECK DECKS. UM, IT'S SORT OF BEEN
16 LUMPED IN WITH THE CC-LS.

17 THE COURT: THAT IS CCPOA?

18 MS. MANIA: BUT THEY'RE NOT REPRESENTED BY CCPOA.
19 TO OUR KNOWLEDGE, THERE IS NO -- NO NEGOTIATION OR
20 REQUIREMENT. THERE IS NO IMPEDIMENT THAT WE'RE AWARE OF.

21 THE COURT: IS THAT TRUE. DID HE LEAVE ALREADY?
22 WHAT HAPPENED TO YOUR POA GUY?

23 WELL, I DON'T KNOW IF THEY ARE OR THEY AREN'T.

24 MR. RUSSELL: YOUR HONOR, THEY ARE REPRESENTED.
25 THEY ARE REPRESENTED EMPLOYEES. IT MAY VERY WELL BE THE

1 SAME SITUATION.

2 THE COURT: BUT NOT BY POA?

3 MR. RUSSELL: BUT NOT BY CCPOA.

4 THE COURT: SO YOU'LL HAVE TO NEGOTIATE WITH
5 SOMEONE ELSE THEN.

6 MR. RUSSELL: I THINK THAT'S WHAT I'M JUST BEING
7 TOLD. I DIDN'T KNOW THE SITUATION WAS GOING TO COME UP
8 BECAUSE THAT'S WHAT I'M BEING TOLD BY THE MY CLIENTS.

9 THE COURT: I THOUGHT THEY WERE PEACE OFFICERS.
10 THEY'RE NOT.

11 MS. NYGARD: NO.

12 MR. ADAM: THEY'RE NOT BY THE CCPOA.

13 THE COURT: I THOUGHT THEY WERE. WELL, ANY WAY.

14 MR. BEAN: YEAH.

15 THE COURT: WHATEVER IT IS, YOU HAVE TO FIND OUT
16 WHO THEY ARE REPRESENTED BY AND YOU'RE GOING TO HAVE TO CALL
17 THEM TOMORROW AND SET UP YOUR APPOINTMENT TO MEET WITH THEM
18 AND SEND THEM COPIES OF YOUR PROPOSALS. THE MENTAL HEALTH
19 PEOPLE.

20 MR. RUSSELL: RIGHT.

21 MS. NORMAN: THE DEFENDANTS REPORTED THAT THERE
22 WAS SOME TRAINING OF THE FORENSIC MENTAL HEALTH UNIT, UM, IN
23 THE MOTION FOR RECONSIDERATION ON THE USE OF DECKS. I DON'T
24 KNOW IF DEFENDANTS CAN SPEAK TO THAT. BECAUSE THOSE WERE
25 THE SORT OF PEOPLE WHO PERFORMED THE MENTAL HEALTH

1 EVALUATIONS FOR PAROLEE HEALTH PROCEEDING.

2 THE COURT: I KNOW NOTHING ABOUT THIS. WAS THIS
3 BRIEFED?

4 MS. NORMAN: IT WAS IN THE MOTION FOR
5 RECONSIDERATION.

6 THE COURT: I'M SORRY?

7 MS. NORMAN: IT WAS IN THE MOTION FOR
8 RECONSIDERATION WAS REFERENCED, I BELIEVE. BUT WE CAN -- WE
9 CAN LEAVE IT AT IF DEFENDANTS WILL GET BACK.

10 THE COURT: WAS IT IN THE STATUS CONFERENCE
11 AGENDA?

12 MS. NORMAN: NO.

13 THE COURT: OH. OKAY. WHY DON'T YOU ALL TALK
14 ABOUT THAT THEN BECAUSE I DON'T KNOW WHAT -- I DON'T KNOW
15 ANYTHING ABOUT IT.

16 MS. NORMAN: OKAY. UM, THE NEXT ISSUE IS THE
17 REPORT ON BARRIERS TO CONNECTIVITY FOR DESKS WITHIN THE
18 INSTITUTIONS. IT'S PARAGRAPH SEVEN OF THE ORDER. UM, AND
19 WE DID RECEIVE A REPORT FROM DEFENDANTS, UM, WHICH DIDN'T
20 REALLY GIVE US VERY MUCH INFORMATION AT ALL.

21 BASICALLY, IT WAS A LIST OF EACH PRISON WITH A
22 LISTING OF THE TYPE OF BARRIER THERE WAS TO CONNECTIVITY BUT
23 NO QUANTIFYING, NO NUMBERS, NO SPECIFICS ABOUT HOW MANY
24 COMPUTERS THEY NEEDED, HOW MANY PATCH CABLES, THAT SORT OF
25 THING. SO WE DON'T --

1 **THE COURT:** DO YOU HAVE MORE ON THE CONNECTIVITY
2 ISSUE MORE THAN WHAT YOU TOLD THEM ALREADY?

3 **MR. RUSSELL:** NOT AT THIS JUNCTURE, YOUR HONOR. I
4 MEAN THAT'S -- THAT IS PART OF THE BUDGET CHANGE PROPOSAL
5 THERE'S NOW BEFORE THE DEPARTMENT OF FINANCE. UM, I MEAN,
6 THERE, WE DID ADVISE THE PLAINTIFF'S COUNSEL OF THE
7 SUBSTANTIAL BARRIERS THAT EXIST IN THESE INSTITUTIONS. AND
8 IT'S A NUMBER OF DIFFERENT CATEGORIES.

9 **MS. NORMAN:** ACTUALLY, DEFENDANTS HAVE CONTENDED
10 THAT THEY HAVE A DETAILED SURVEY THAT THEY'RE WITHHOLDING
11 FROM US ON THE GROUNDS OF PRIVILEGE. THEY FAILED TO PROVIDE
12 ANY KIND OF PRIVILEGE LOG. BUT THEY ACTUALLY HAVE INFORMED
13 US THAT THEY DO HAVE QUITE A BIT MORE INFORMATION.

14 **THE COURT:** WELL, ARE YOU TALKING ABOUT PARAGRAPH
15 11 NOW?

16 **MS. NORMAN:** I'M SORRY. PARAGRAPH SEVEN OF THE
17 ORDER WHICH SAYS IF THEY CONTEND THAT, UM, CONNECTIVITY
18 BARRIERS WILL PREVENT THEM FROM REQUIRING CC-1S TO CHECK
19 DECKS OR MENTAL HEALTH CLINICIANS TO CHECK DECKS THAT THEY
20 NEED TO PROVIDE PLAINTIFFS WITH A REPORT ON THE NATURE OF
21 THOSE BARRIERS AS WELL AS WORK AROUNDS BASICALLY HOW THEY'RE
22 GOING TO PROVIDE THE INFORMATION IN DECKS PENDING ADEQUATE
23 CONNECTIVITY.

24 **THE COURT:** AND SO HAVE YOU TOLD THEM IN WHAT WAY
25 YOU ARE UNSATISFIED WITH THE REPORT THEY'VE GIVEN YOU SO

1 FAR?

2 MS. NORMAN: YES.

3 THE COURT: AND IN WHAT FORMAT DID YOU TELL THEM
4 THAT?

5 MS. NORMAN: WE SENT THEM AN E-MAIL. WELL, WE
6 REQUESTED, THE INITIAL LETTER WE GOT REFERENCED ATTACHMENTS.
7 UM, WE REQUESTED THE ATTACHMENTS. THEY SAID WE MISTAKENLY
8 REFERENCED THE ATTACHMENTS. THE ATTACHMENTS ARE WORK
9 PRODUCT AND PRIVILEGED. WE'RE NOT GOING TO GIVE THEM TO
10 YOU. THE ATTACHMENTS WERE THE SURVEYS, AS WE UNDERSTAND IT.
11 WE HAVEN'T SEEN THEM. SO, UM, WE SAID, WELL, CAN YOU SEND
12 US A REDACTED VERSION VIA E-MAIL AND WE NEVER RECEIVED A
13 RESPONSE.

14 THE COURT: OKAY. WELL, THAT'S A LITTLE BIT
15 DIFFERENT. IT SEEMS LIKE WHAT YOU NEED TO TELL THEM IS WHAT
16 IT IS, WHAT FACTS YOU WOULD LIKE TO HAVE THAT ARE NOT
17 INCLUDED IN THE REPORT THEY GAVE YOU. IN OTHER WORDS, WHAT
18 IS DEFICIENT ABOUT THE REPORT THEY GAVE YOU. I DON'T KNOW
19 WHAT THE ATTACHMENTS WERE AND WHETHER THEY SHOULD GIVE THEM
20 TO YOU OR NOT, BUT THEY SHOULD GIVE YOU THE INFORMATION THAT
21 YOU NEED. AND IF THEY DIDN'T, THEN YOU NEED TO TELL THEM
22 WHAT IT IS YOU WANTED TO KNOW THAT THEY DIDN'T TELL YOU. SO
23 MAYBE YOU COULD DO THAT FIRST.

24 MS. NORMAN: WE WOULD CONTEND THAT WE HAVE BUT WE
25 WILL CERTAINLY DO IT AGAIN.

1 **THE COURT:** WELL, THAT IS WHAT I ASKED. IF YOU
2 HAVE, THEN YOU COULD SAY OH, WHAT WAS IN THE LETTER OF THUS
3 AND SUCH AND THEN HE CAN LOOK AT IT AND THEN YOU WOULDN'T
4 HAVE TO DO IT AGAIN.

5 **MS. NORMAN:** IT WAS OUR SEPTEMBER 26 LETTER AS
6 WELL AS AN E-MAIL AND IT'S IN THE STATUS CONFERENCE
7 STATEMENT.

8 **THE COURT:** AND DO THOSE SAY SPECIFICALLY, AND
9 MAYBE I SHOULD REMEMBER THIS, BUT DO THOSE SAY SPECIFICALLY
10 WHAT THE DEFICIENCIES WERE?

11 **MS. NORMAN:** YEAH. IT SAYS THEY GAVE US A PARTIAL
12 REPORT WHICH WAS THE GENERAL TYPES OF BARRIERS BUT DID NOT
13 PROVIDE THE UNDERLYING INFORMATION REGARDING, FOR EXAMPLE,
14 HOW MANY WORK STATIONS WERE NEEDED -- THIS IS ON PAGE 11 --
15 FOR ACCESS BY WHICH STAFF MEMBERS AT EACH INSTITUTIONS.

16 DEFENDANTS REPORT THEY HAVE A DETAILED SPREAD
17 SHEET BUT WITHHELD IT ON THE GROUNDS OF PRIVILEGE.

18 **THE COURT:** OKAY. SO YOU WANT TO KNOW HOW MANY
19 STATIONS THERE ARE?

20 **MS. NORMAN:** RIGHT. HOW MANY STATIONS.

21 **THE COURT:** HOW MANY PEOPLE AT WHICH INSTITUTION?

22 **MS. NORMAN:** RIGHT.

23 **THE COURT:** OKAY.

24 ANY REASON WHY YOU CAN'T TELL THEM THAT?

25 **MR. RUSSELL:** WELL, YOUR HONOR, FIRST OF ALL, THE

1 SURVEYS THAT WERE DONE WERE DONE AT MY REQUEST. I BELIEVE
2 THAT THEY'RE ATTACHED TO THE ATTORNEY WORK PRODUCT.

3 **THE COURT:** YOU DON'T HAVE TO GIVE THEM THE SURVEY
4 DATES. CAN YOU JUST TELL THEM THE INFORMATION?

5 **MR. RUSSELL:** WELL, I GUESS I COULD. I COULD
6 ALWAYS SAY HOW MANY -- WHY DO THEY NEED TO KNOW HOW MANY
7 COMPUTERS ARE NEEDED AT, YOU KNOW?

8 **THE COURT:** BECAUSE IT'S HARD TO TRACK YOUR
9 COMPLIANCE AND YOUR ABILITY TO COMPLY. AND IF THEY KNOW
10 THESE THINGS THEN IT'S EASIER TO TRACK AND IT DOESN'T SEEM,
11 THERE DOESN'T SEEM TO BE ANY CONSIDERATION ON THE OTHER
12 SIDE.

13 IN OTHER WORDS, WHEN YOU COME FORWARD AND SAY WE
14 CAN'T DO THIS, IT'S HARD TO EVALUATE THE -- I DON'T WANT TO
15 SAY TRUTH -- BUT THE REASONABLENESS OF THAT STATEMENT IF ONE
16 DOESN'T HAVE THE FACTS AT ONE'S FINGERTIPS TO KNOW THAT.
17 AND IF YOU HAVE ONLY THREE COMPUTERS WHEN YOU NEED A
18 HUNDRED, THAT'S ONE THING. IF YOU HAVE 99 COMPUTERS WHEN
19 YOU NEED A HUNDRED, THAT'S SOMETHING ELSE. SO THAT'S THE
20 SORT OF THING THAT THEY NEED TO KNOW IN ORDER TO EVALUATE
21 HOW WELL YOU'RE DOING. AND I DON'T SEE ANY REAL DOWNSIDE
22 FOR YOU SINCE YOU KNOW THAT INFORMATION, AND IT'S NOT GOING
23 TO HURT YOU TO TELL THEM, UNLESS IT SHOWS THAT YOU'RE OUT OF
24 COMPLIANCE.

25 UM, THEN I THINK THE EASIEST THING WOULD BE JUST

1 TO TELL THEM.

2 MR. RUSSELL: THE -- THE OTHER ELEMENT THAT THAT
3 GOES TO IS BECAUSE IT IS A PART OF THE BUDGET CHANGE
4 PROPOSAL, IT IS PART OF THE DELIBERATIVE PROCESS PRIVILEGE.

5 THE COURT: I'M NOT ASKING YOU TO TELL THEM WHAT
6 YOU SAID IN YOUR PROPOSAL. I'M JUST ASKING YOU TO TELL THEM
7 HOW MANY COMPUTERS YOU HAVE AND HOW MANY WORK STATIONS YOU
8 HAVE AND HOW MANY EMPLOYEES YOU HAVE.

9 MR. RUSSELL: BUT THAT'S WHAT'S IN THE PROPOSAL.

10 THE COURT: THE FACT THAT IT'S IN THE PROPOSAL
11 DOESN'T MAKE IT OFF LIMITS. THE PROPOSAL IS OFF LIMITS.
12 THE FACTS THAT MIGHT BE IN THE PROPOSAL AREN'T RENDERED OFF
13 LIMITS BECAUSE THEY'VE BEEN PLACED IN A PROPOSAL.

14 MR. RUSSELL: ALL RIGHT, YOUR HONOR. I BELIEVE
15 THAT WE CAN -- I MEAN THERE ARE SOME SUBSTANTIAL BARRIERS TO
16 PROVIDING CONNECTIVITY. AND IF IT -- IF IT SUPPORTS OUR
17 POSITION THAT THIS IS GOING TO TAKE A LITTLE BIT MORE TIME
18 WE WILL PROVIDE THAT TO THE PLAINTIFF'S COUNSEL.

19 THE COURT: OR IF IT DOESN'T. YOU'LL PROVIDE IT
20 TO COUNSEL EITHER WAY, RIGHT?

21 MR. RUSSELL: WE'LL PROVIDE IT EITHER WAY.

22 THE COURT: OKAY.

23 MR. RUSSELL: WE'RE TALKING ABOUT THE NUMBERS.
24 YOU KNOW, THESE ARE, YOU KNOW, WE HAVE DETERMINED THAT WE
25 NEED THESE COMPUTERS. WE NEED THESE MANY, WE NEED TO DRILL

1 THROUGH THESE MANY WALLS, WHATEVER IT MIGHT BE.

2 **THE COURT:** OKAY. WHAT ELSE?

3 **MS. NORMAN:** AN ACCOMPANYING ISSUE IN PARAGRAPH
4 SEVEN IS, UM, THEY WERE ORDERED TO DEVELOP LOCAL PROCEDURES
5 TO INSURE THAT THE INFORMATION FROM DECKS GETS TO CC-1S,
6 CNBRS, ETC., PENDING ADEQUATE DECKS ACCESS.

7 WE HAVEN'T RECEIVED THOSE LOCAL PROCEDURES YET.
8 NOR HAVE WE RECEIVED DRAFTS IN ADVANCE OF THE DEADLINE AS
9 REQUIRED BY PARAGRAPH 25. WE WOULD LIKE TO RECEIVE THOSE
10 PROCEDURES. LOCAL PROCEDURES.

11 **THE COURT:** WHAT PARAGRAPH NUMBER IS THIS NOW?

12 **MS. NORMAN:** THAT'S PARAGRAPH SEVEN AS WELL.

13 **THE COURT:** OH.

14 **MR. RUSSELL:** AND, YOUR HONOR, THIS DOES GO
15 DIRECTLY TO THE MOTION FOR RECONSIDERATION. IN THE AUGUST
16 HEARING THE COURT SAID WHY DON'T YOU GET THAT DONE WITHIN
17 120 DAYS. WE ADVISED THAT THE COURT THAT THAT WILL BE A
18 DIFFICULT THING TO DO TO DEVELOP THOSE KINDS OF LOCAL
19 PROCEDURES. THE COURT RECOGNIZED THAT. IT'S NOWHERE WITHIN
20 PARAGRAPH SEVEN.

21 **MS. NORMAN:** I DON'T BELIEVE THAT WAS ARGUED AT
22 THE AUGUST 16 HEARING.

23 **THE COURT:** LET'S SAY THAT IS RIGHT. 120 DAYS
24 FROM AUGUST 16 IS JUST ABOUT HERE SO SEPTEMBER, OCTOBER,
25 NOVEMBER, DECEMBER. IF YOU LOOK AT DECEMBER 16 THEN. SO

1 THAT'S -- I DON'T REMEMBER THAT. BUT IF THAT'S WHAT YOU
2 THINK I SAID THEN WE CAN GO WITH THAT.

3 MS. NORMAN: UM, THEN THE NEXT ISSUE SOMEWHAT
4 SIMILAR IS THE REVISION OF THE ACCOMMODATIONS PLAN.

5 THE COURT: AREN'T YOU UP TO FOUR ALREADY?
6 YOU SAID YOU HAD FOUR.

7 MS. NORMAN: I DON'T THINK SO ACTUALLY BUT --

8 THE COURT: OKAY. WHAT ELSE?

9 MS. NORMAN: UM, SORRY. THE REVISION OF THE
10 ACCOMMODATIONS PLAN, THE SAME ISSUE. WE, THAT WAS DUE, IT'S
11 NOW DUE. WE'VE NOT RECEIVED DRAFTS. IT IS THEIR POLICIES
12 AND PROCEDURES FOR PROVIDING ACCOMMODATION.

13 THE COURT: WHAT PARAGRAPH?

14 MS. NORMAN: THAT IS PARAGRAPH 24 OF THE ORDER.

15 THE COURT: OH.

16 MS. NORMAN: AND IT IS PAGE 18.

17 THE COURT: OKAY. WELL, YOU SAID YOU WERE SOAKING
18 RECONSIDERATION. IS THAT -- WHAT IS IT THAT YOU WANT TO DO?

19 MR. RUSSELL: WELL, MY UNDERSTANDING, YOUR HONOR,
20 IS THAT THE -- I BELIEVE THAT THE REVISED PLAN IS, IT IS
21 EITHER BEEN COMPLETED OR IS -- IT'S ALMOST COMPLETED.

22 EXCUSE ME FOR JUST A SECOND, YOUR HONOR.

23 THANKS, YOUR HONOR.

24 MY UNDERSTANDING IS THE REVISED REMEDIAL PLAN FOR
25 BPH WAS PART OF THE PACKAGE THAT WAS PROVIDED TO CCPOA ON

1 NOVEMBER 2. IT HAS BEEN COMPLETED. WE CAN PROVIDE A COPY
2 OF THAT TO PLAINTIFF'S COUNSEL.

3 **THE COURT:** OH, GOOD. SO YOU CAN DO THAT
4 TOMORROW.

5 **MR. RUSSELL:** DO THAT TOMORROW.

6 **THE COURT:** OKAY.

7 THERE WAS SOMETHING I JUST DID THAT I DIDN'T SET A
8 DATE FOR. WHAT WAS IT THAT? COMPUTERS WORK STATIONS?

9 **MS. NORMAN:** THE LOCAL PROCEDURES THAT -- THAT WAS
10 DECEMBER?

11 **THE COURT:** NO, IT WAS THE BARRIERS TO CONNECT.
12 NO, THE LOCAL PROCEDURES, THAT IS COMING TOMORROW BECAUSE
13 THAT IS ALREADY DONE. IT WAS THE, UM, DETAIL ON THE
14 CONNECTIVITY.

15 **MS. NORMAN:** RIGHT.

16 **THE COURT:** THE WORK STATIONS. THE, ALL OF THAT.
17 I ASKED YOU TO DO THAT BUT I DIDN'T GIVE YOU A DATE. WHEN
18 WOULD BE A GOOD DATE FOR YOU TO DO THAT?

19 **MR. RUSSELL:** YOUR HONOR, I BELIEVE THAT THAT
20 WOULD BE INCLUDED WITHIN THE INFORMATION THAT'S IN THE DRAFT
21 BUDGET CHANGE PROPOSAL. I THINK WE'RE SUPPOSED TO PROVIDE
22 THAT WITHIN, WELL, WE WERE SUPPOSED TO PROVIDE DECLARATIONS
23 REGARDING THE EFFORTS TO UNDERTAKE THE PROVISIONS OF THE
24 COURT'S ORDER WITHIN 30 DAYS. I WOULD PROPOSE THAT WE DO
25 THAT WITHIN 30 DAYS AS WELL.

1 THE COURT: OKAY. INCLUDED IN THAT REPORT THEN.

2 MR. RUSSELL: YES.

3 THE COURT: YOU'RE CLEAR ON WHAT IT IS THAT THEY
4 WANT?

5 MR. RUSSELL: NO, NOT ENTIRELY.

6 THE COURT: OKAY. WHY DON'T YOU GIVE THEM ANOTHER
7 COPY OF THE THINGS THAT YOU THINK TELL THEM WHAT IT IS YOU
8 WANT?

9 MS. NORMAN: OKAY.

10 THE COURT: AND IF -- IF YOU LOOK AT THOSE AND YOU
11 DON'T UNDERSTAND THEM OR IF IT'S NOT CLEAR TO YOU WHAT THEY
12 WANT, THEN TALK TO THEM.

13 MR. RUSSELL: SURE.

14 THE COURT: OKAY.

15 MS. NORMAN: THANK YOU.

16 THE COURT: WE NEED A NEW DATE I GUESS. WHAT ARE
17 WE DOING? TWO MONTHS.

18 MS. FUNZELL: TWO MONTHS, YOUR HONOR. SIXTY DAYS.

19 THE COURT: SO THAT WOULD BE DECEMBER, JANUARY 15.
20 JANUARY 15 IS A TUESDAY SO THAT WILL WORK. OH, I GUESS
21 THAT'S A THURSDAY. AM I DOING THEM ON THURSDAYS? I GUESS
22 IT DOESN'T MATTER. LET'S DO IT ON TUESDAY, JANUARY 15 AT
23 TWO O'CLOCK IF THAT'S OKAY.

24 MS. NORMAN: THANK YOU.

25 MR. RUSSELL: THANK YOU, YOUR HONOR.

1 (WHEREUPON, AT 3:55 P.M. THE PROCEEDINGS CONCLUDED.)

2 COURT REPORTER'S CERTIFICATE

3 I, STARR A. WILSON, CSR NO. 2462, UNITED STATES
4 DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, DO HEREBY
5 CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
6 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

7 I CERTIFY THAT THE TRANSCRIPT FEES AND FORMAT
8 COMPLY WITH THOSE PRESCRIBED BY THE COURT AND JUDICIAL
9 CONFERENCE OF THE UNITED STATES.

10 
11 _____

12 STARR A. WILSON, CSR NO. 2462
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